IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2004

CORAM
THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

W.P.No.43003 of 2002

1. The Secretary to Government
Home Department,
Secretariat,
Fort. St. George,
Chennai 9.

2. The Director General of Police,
Tamil Nadu, Chennai 600 004. .....Petitioners

- Vs -

1. V.H.Mohammed Haneefa,
Superintendent of Police,
State Human Rights Commission,
Chennai.

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 104. .....Respondents

Writ Petition, under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, as stated therein.

For Petitioners :: Mr. S.V.Durai Solaimalai
Government Advocate

For Respondents :: Mr. J. Pothiraj

:O R D E R

R. BANUMATHI, J.

As against the order of the Tamil Nadu Administrative Tribunal, Chennai made in O.A.No.7731 of 2001 (dated 03.07.2002), the Secretary to Government, Home Department and Director General of Police have preferred this writ petition for setting aside the Impugned Order.

2. The common grounds, which led to the present writ petition could

briefly be stated thus:-
The First Respondent-Officer was recruited to the State Police Service through Tamil Nadu Public Service Commission and was appointed as Deputy Superintendent of Police in 1987. He was promoted as Additional Superintendent of Police in 1996 and from 1998, he is holding the post of Superintendent of Police.

3. While he was serving as Deputy Superintendent of Police, Ooty Town Sub-Division, the Officer happened to investigate the death of Tmt.Kamalavathy. She had committed suicide on 04.02.1992 □ 05.20 p.m regarding which a case has been registered by Ooty Town West Police in Crime No.27/1992 under Sec.306 I.P.C.

4. Initially, the case was registered under Sec.174 Crl.P.C □ Suspicious Death and Inquest was held by the

Revenue Divisional Officer and he submitted his Report through the Collector on 01.03.1992. Thereafter, the First Respondent had taken up the Investigation. On the basis of the Investigation, the First Respondent arrived at the conclusion that the Husband of the deceasedPhilip was not responsible for the suicide, but the Husband of the elder Sister of the Deceased viz., Krishnamoorthy (Accused in Crime No.27 of 1992) was responsible for the suicidal death of Kamalavathy. According to the First Respondent, Investigation disclosed that the Accused pressurised the deceased to succumb to his sexual instinct and unable to bear the mental torture, Kamalavathy committed suicide.

5. Upon completion of the formalities of the Investigation, the successor to the First Respondent viz., Muthusamy (P.W.14) had continued the Investigation. On approval from the District Public Prosecutor of Nilgiris District, charge sheet was filed. The case ended in acquittal by the Judgment dated 19.07.1995 for want of evidence. In the Judgment, while acquitting the Accused, the learned Sessions Judge made certain observations that Philip (Husband of the DeceasedKamalavathy) could have been responsible for the suicidal death of Kamalavathy.

6. For the Acquittal of the Accused in S.C.No.5 of 1994, the First Respondent was issued Charge Memo alleging Perfunctory Investigation in Crime No.27 of 1992. It was alleged that the First Respondent was not careful enough in seizing the Coffee Tumbler used by Kamalavathy and her Husband-Philip and erred in filing the Charge Sheet against the Accused - Krishnamoorthy, ignoring the findings of the Revenue Divisional Officer. It was further alleged □...knowing this fact, Investigation Officer instead of charge sheeting the deceased□s Husband under dowry harassment, has foisted this case on one Krishnamoorthy that his torture on the deceased resulted in the suicide. The case ended in acquittal...□. On the above allegations, show cause notice was issued to the First Respondent in C.No.121020/GB IV (2)/2001 dated 16.0 7.2001.

7. On the above Charge Memo, the First Respondent has submitted his

explanation on 01.08.2001. After enquiry, he was awarded punishment of withholding his increment for a period of Two years without cumulative effect in Director General of Police, Chennai proceedings C.No.1 21020/GB IV(2)/2001 dated 28.11.2001.

8. As against the order dated 28.11.2001, the First Respondent has preferred an Application in O.A.No.7731 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai. Upon considering the submissions of both sides of the Officer and the Department, the Tribunal found that the Show Cause Notice was issued on 16.07.2001 □ with an unexplained delay of Nine years. It was further pointed out that the Investigation done by the individual officer could be viewed and criticised by another officer, which does not mean that the Investigation was done perfunctorily. Mainly pointing out the delay of Nine years in issuance of the Charge Memo, the Tribunal has quashed the Charge Memo by setting aside the Order of Punishment.

9. Aggrieved over the same, the Department has preferred this writ petition praying for reversal of the Order of the Tribunal.

10. Arguing for the Department, learned Government Advocate Mr. S.V.Dorai Solaimalai has assailed the Impugned Order contending that the First Respondent has not acted in good faith in making the Investigation and that his act is unjustified. The Impugned Order is further assailed on the ground that the Tribunal erred in saying that there was no prompt and immediate action in issuance of the Charge Memo. Two fold main contentions are advanced:-
(i) Non-seizure of Coffee Tumbler used by the deceased-Kamalavathy proved fatal and the First Respondent has not properly investigated and as the Investigating Officer, he is responsible for the acquittal and the guilty going scot-free;

(ii) that the delay in issuance of the Charge Memo is properly explained by the Department and that preparatory steps were taken in calling for the explanation and opinion of the Public Prosecutor on the Judgment was obtained on 26.12.1998 and the same was referred to D.I.G of Police, Coimbatore for taking further action on 09.02.1999 and D. I.G. of Police calling for the explanations from the First Respondent on 28.02.1999 and the First Respondent offering his explanations on 1 9.07.1999 that there was no delay in the issuance of the Charge Memo.
It is submitted that the Tribunal erred in observing that the Charge Memo served on 16.07.2001 and punishment awarded on 28.11.2001 and that the entire proceeding was closed within a short span of time, which the Tribunal did not properly take note of the same.

11. Learned counsel for the First Respondent-Officer has submitted that the delay in issuance of the Charge Memo was not properly explained and that has deprived the Respondent from the opportunity of promotion. It is further submitted that the issuance of Charge Memo with an inordinate delay has caused great hardship and prejudice to the Respondent and under those facts and circumstances, the Tribunal has rightly set aside the Charge Memo and the punishment awarded to the Respondent.

12.We have carefully considered the rival submissions of both sides.

13. The occurrence relating to S.C.No.5 of 1994 was in the year 1992 . Judgment in S.C.No.5 of 1994 was pronounced on 19.07.1995. In the said case, First Respondent was the Investigating Officer, who was examined as P.W.13. In the Sessions Trial, Charge sheet was filed by his successor P.W.14-Muthusamy, Deputy Superintendent of Police, on obtaining approval from the Public Prosecutor of the District. When the case ended in Acquittal, immediately show cause notice was not issued to the First Respondent. Alleging perfunctory investigation in Ooty Town West Police Station Crime No.27/1992 under Sec.306 I.P.C and that the First Respondent has committed serious lapse in not seizing the Coffee Tumbler and that Charge Memo was issued only in 2001, stringent action sought to be initiated against the First Respondent only Nine years after the incident. Learned Government Advocate submitted that because of the serious lapse committed by the First Respondent in not filing the Charge Sheet against the Husband of the Deceased, the real guilty persons were allowed to go scot-free and that has affected the morale of the Investigation. Learned Government Advocate has further submitted that there were some preparatory steps between 1995 and 2001 before initiating the action against the First Respondent. Our attention were drawn by the Government Advocate to ground (e) of the Memorandum of the writ petition in support of the contention that initially after obtaining the opinion of Assistant Public Prosecutor on the Judgment on 26.12.1998, the matter was referred to Deputy Inspector General of Police, Coimbatore for taking further action on 09.0 2.1999. Deputy Inspector General of Police instructed the then Superintendent of Police, Nilgiris to obtain explanation from the First Respondent. On 28.02.1999, the explanation was called for from the First Respondent and the First Respondent offered his explanation on 19.0 7.1999 and the same was processed at the office of DPO, Nilgiris and thereafter at Coimbatore Range Office and finally proposal was sent to DGP Office on 29.04.2001 imposing the punishment of stoppage of increment for Two years without cumulative effect.

14. We are of the view that it is not as if that there was no delay at all in calling for explanation from the First Respondent. Though the delay is sought to be explained, we find at every spell there is long gap in pursuing the matter. For instance, there is long delay of Three years in obtaining the opinion of the Assistant Public Prosecutor and thereafter there was unexplained delay at every stage. The delay in issuance of the Charge Memo deprives the delinquent Officer the reasonable opportunity of putting forth his defence effective. We are of the opinion that in view of the delay in issuance of the Charge Memo, the Tribunal has rightly set aside the Charge Memo and the Impugned Order of punishment.

15. The timing in issuance of the Charge Memo is also to be taken note of. In or about 2000 □ 2001, the name of the First Respondent was about to be considered for the select list □ for conferment of I.P. S. When his name was about to be considered, the file was processed and finally proposal was sent to DGP Office on 29.04.2001 imposing the impugned punishment of stoppage of increment for Two years without cumulative effect. The issuance of the Charge Memo in 1998 and processing the file with long gap and

unexplained delay at every stretch and imposing the punishment in 2001 raises serious doubts.

16. Learned counsel for the First Respondent has drawn our attention to the decision reported in 1984 T.N.L.J. 123 (V.S.RAMANARAYANAN .. VS.. THE FOOD CORPORATION OF INDIA) in support of his contention that the delay in issuance of Charge Memo would cause prejudice to the delinquent Officer. Allowing the Writ Appeal, a Division Bench of this Court set aside the order of the learned single Judge. In the facts and circumstances of this case, we also find that the delay in processing the matter has deprived the First Respondent from putting forth his defence effectively.

17. In exercising the Writ Jurisdiction, the Court cannot go into the correctness of the truth or otherwise of the Charge. Without assessing the evidence we may consider whether there was reasonable basis for issuance of the Charge Memo. In Crime No.27/92 of Ooty Town West Police Station, the First Respondent is alleged to have committed lapse in not seizing the Coffee Tumbler used by the DeceasedKamalavathy and by his perfunctory Investigation, instead of charge sheeting Philip (Husband of the deceased-Kamalavathy), charge sheeted the Accused-Krishnamoorthy by ignoring the findings of the Revenue Divisional Officer and that perfunctory Investigation has ended in Acquittal.

18. Of course, the Investigating Officer is the arm and Pivot of the law and plays a key role in dispensation of criminal justice. Police investigation is therefore the foundation stone, on which the whole edifice of criminal trial rests. Different methods are employed in making an Investigation complete. During the course of the Investigation, mass of information comes before the Investigating Officer. The duty of the Investigating Officer is to extract truth from such mass of information gathered. Ethical conduct is absolutely essential for Investigation and discerning the appropriate material.

19. We do not find any unethics in the investigative methods adopted by the First Respondent nor in the non-seizure of the Coffee Tumbler. The methods applied in the Investigation process depends upon the mind set of the individual which would differ from another individual s angle and outlook. It may be an error of Judgment on the part of the First Respondent in not seizing the Coffee Tumbler used by the deceased-Kamalavathy. But, we find that there was no unethical behaviour in non-seizure of Coffee Tumbler.

20. Learned Sessions Judge acquitted the Accused-Krishnamoorthy, who is none other than the Sister s Husband of the Deceased-Kamalavathy mainly on the ground that the place of occurrence was the Husband of the Deceased viz., P.W.9-Philip. It is alleged that there was dispute between Kamalavathy and her Husband regarding the dowry amount which was not properly investigated upon. No substantial material is shown before us to show that Philip (Husband of the Deceased-Kamalavathy) has abetted the commission of suicide and that the Investigation adopted by the First Respondent was a perfunctory Investigation.

21. Learned Government Advocate has referred to the decision reported in 1985 S.C.C. (CRI) 267 (BHAGWANT SINGH ..VS.. COMMISSIONER OF POLICE) and submitted that on the basis of said decision, a Circular No.66241/CON I (E)/86 dated 20.06.1986 had been issued to all the Superintendents of Police that the Police Officers would have to take serious note of attempted suicide or death in suspicious circumstances of young married women during the first Ten years of their marriage and that the Investigation should be done in an impeccable manner and that the First Respondent-Officer has not carefully conducted the Investigation in charge sheeting the real culprit and the Department was justified in issuing the Charge Memo on the ground of perfunctory Investigation. Learned Government Advocate has also submitted that the punishment imposed upon the delinquent officer withholding his next increment for a period of Two years without cumulative effect is just and reasonable and the Tribunal was not justified in setting aside the same.

22. We have carefully gone through the Circular. We fully agree with the tenor of the Circular and that any delay or slackness in the Investigation might prove fatal to the Prosecution in Crimes of women deaths. Though the learned Government Advocate has pointed out the Circular, he has not pointed out how there was slackness or unethics in the methods adopted by the First Respondent in the Investigative methods. We may also point out that upon completion of the formalities of the Investigation, P.W.14-Muthusamy, successor of the First Respondent has filed the Charge Sheet. Opinion was also obtained from the Public Prosecutor. Any lapses could have been brought to the notice then and there. It is also to be pointed out that there was no complaint from the Mother of the Deceased or from other source. In our considered view, such lapse in the Investigation cannot form the reasonable basis for Charge Memo particularly at a distant point of time. These aspects were rightly considered by the Tribunal. The conclusion of the Tribunal setting aside the Charge Memo and the consequential punishment are to be sustained.

23. While exercising the jurisdiction under Article 226 of the Constitution, High Court is not constituted as a Court of Appeal over the decision of the Tribunal. We are of the view that the decision of the Tribunal is the result of proper assessment of all the relevant factors. In our considered view, this is not a fit case for issuance of Writ of Certiorari.

24. For the reasons stated above, we are not inclined to interfere with the order passed by the Tamil Nadu Administrative Tribunal, Chennai made in O.A.No.7731 of 2001 (dated 03.07.2002) and this Writ Petition is dismissed. No costs.

Index: Yes
Internet: Yes
Dpn/-

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Home Department,

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Fort. St. George,
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2. The Director General of Police,
Tamil Nadu, Chennai 600 004.

3. The Registrar,
Tamil Nadu Administrative Tribunal,
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